REMARKS

Reexamination and reconsideration of this application in view of the amendment to the claims and the following remarks is respectfully requested. A Request for Continued Examination is being submitted contemporaneous with this Response. By this Response with amendment, claims 1-2, 4, 8-9, 11, 15-16, 18, and 20 are amended; claims 3, 10, and 17 are cancelled; and no new claims are added. After this Response with amendment, claims 1-2, 4-9, 11-16, and 18-20 remain pending in this application.

Telephonic Summary

Applicant wishes to thank Examiner Araque for holding the telephonic interview on March 5, 2008. Applicant's representatives Jose Gutman and Tom Grzesik along with Examiner Araque participated in the telephone call. Discussed during the call were amendments made to independent claims 1, 8, and 15 along with prior art references McClung III and Thakur. No agreements were reached regarding the claims.

Claim Objections

The Examiner objected to claim 20 for failing to further limit the subject matter of a previous claim. The Applicant has amended claim 20 to more clearly recite "the entire refund". Claim 15 recites that a portion of the refund is sent to the user whereas claim 20 now recites that the entire refund is sent to the user. Accordingly, the Applicant submits that the objection to claim 20 has been overcome and should be withdrawn.

Claim Rejections - 35 USC §112

The Examiner rejected claim 15 under 35 U.S.C. §112, first paragraph, for including subject matter that was not described in the Specification in such a way as to reasonably convey to one or ordinary skill in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In particular, the Examiner states that the claim language "...wherein the transmitter is further for sending a portion of the refund directly to the user and keeping a remaining portion of the refund as a fee associated with the user..." is not found in paragraph [0050] of the U.S. Pre-Grant Publication No. 2005/0044001 of the present application as indicated by the Applicant. Support for this claim language can be found in paragraph [0052] of U.S. Pre-Grant Publication No. 2005/0044001, which recites:

> In one embodiment of the present invention, the web site 104 exacts a fee from the user 102 in exchange for offering the purchase price protection agent. In this embodiment, the web page 355 provides a means for the user 102 to enter a payment to the web site 104, such as via a credit card. In another embodiment of the present invention, the web site 104 exacts a commission from the user 102 in exchange for offering the purchase price protection agent. In this embodiment, if the web site 104 determines that the user 102 is due a refund from web site 106, the web site 104 pays a portion of the refund directly to the user 102. Then, the web site 104 collects the total refund directly from the web site 106, on behalf of the user 102.

Accordingly, the Applicant submits that the rejection of claim 15 under 35 U.S.C. §112, first paragraph, has been overcome and should be withdrawn.

Claim Rejections - 35 USC §103

Reconsideration of the rejection of claims 1-20 under 35 U.S.C. §103(a) as being considered made obvious by McClung, III, (U.S. Pat. No. 7,107,225 B1) in view of Thakur et al. (U.S. Patent Pub 2002/0194069), is respectfully requested in view of the amendments to claims 1-2, 8-9, and 15-16, and for the following reasons.

The Applicant, first of all, is not conceding in this application that the claims prior to this amendment, and that the cancelled claims, are not patentable over any prior art, as the present claim amendments and cancellations are only for facilitating expeditious prosecution of allowable subject matter. Applicant respectfully reserves the right to pursue the cancelled claims and other claims in one or more continuations and/or divisional patent applications.

The Examiner on page 3 of the present Office Action states that McClung teaches:

> receiving, by a first web site, information directly from a user, the information being entered by the user at the first web site via a user interface at the first website, wherein the information **(discussed below)** is associated with a product and/or service that was purchased by the user, wherein the information includes the purchase price of the product and/or service and wherein the vendor offers purchase price protection for the product and/or service, wherein the user also enters a type of price protection offered by the second website, and wherein the user submits the information to the first web site by selecting a button on the user interface (discussed below) (Col. 2 Lines 14— 27, 53— 56; Col. 4 Lines 8— 30; Col. 5 Lines 41 — 54);

Col. 2, lines 14-27 and 53-56 of McClung merely state:

> [...]
>
> In one aspect, the vendor (and/or host system or similar system) monitors competitors on a real time basis and provides the consumer at the vendor's location any better price available then at any competitor for the same item (or service)
>
> [...]

Col. 4, lines 8-30 of McClung present similar teaching as col. 2, lines 14-27 and 53-56 of McClung.

Col. 5, lines 41-54 of McClung merely state:

> The present invention therefore, in certain embodiments, provides improvements for a method for generating vendor information including contacting a host system by a consumer, identifying a pertinent geographic area of interest to the consumer, identifying at least one vendor doing business in the pertinent geographic area, retrieving from the host system information related to the at least one vendor, and displaying said information for the consumer; and in one aspect such a method includes automatically displaying and/or downloading to a computer the information to the consumer--the improvements including providing a method to guarantee to the consumer a better price or a best price on items or services purchased from the vendor for a predetermined time period following a transaction.

The Applicant points out that the language of "a method for generating vendor information including contacting a host system by a consumer, identifying a pertinent geographic area of interest to the consumer, identifying at least one vendor doing business in the pertinent

geographic area, retrieving from the host system information related to the at least one vendor, and displaying said information for the consumer; and in one aspect such a method includes automatically displaying and/or downloading to a computer the information to the consumer" is merely identifying what Thakur teaches, which is a host system that a user can access to fill a questionnaire that **does not** include purchase information in order to receive coupons from the Host system. The host system in Thakur records transaction information at a vendor by either retrieving or receiving the transaction information from the vendor, not by the user entering transaction information. Col. 5, lines 41-54 of McClung is merely stating that this system of Thakur can also perform price guaranteeing operations, which would most likely be performed automatically based on the teachings of McClung and Thakur without a user entering any purchase transaction information, refund type information, or purchase price protection information.

For example, McClung only teaches that a user logs into a system and receives a notification of a refund. See McClung at col. 1, lines 606-4. This teaching clearly does not suggest that a user enters a type of purchase price protection offered by a second website. The system that McClung is referring to is the system of Thakur. Thakur at paragraph [0019] clearly teaches that the only information entered by a user is information that allows the system to identify a pertinent geographic area. Thakur a paragraph [0062] clearly teaches that a vendor and the host system are in direct contact for consumer/vendor interaction and/or transaction. Therefore, Thakur teaches that the host system receives transaction information from the vendor, not the user through a user interface. Accordingly, the presently claimed invention distinguishes over McClung (and/or Thakur) for at least these reasons.

Applicant points out that the independent claim1 (and similarly independent claims 8 and 15) has been amended to more clearly recite:

> receiving, by a first web site, information directly from a user, the information being entered by the user at the first web site via a user interface at the first website, wherein the information is associated with a configuration of a product and/or service that was purchased by the user from a second web site different from the first web site, wherein the configuration of the product and/or service includes a plurality of configurable components each associated with a different purchase price, wherein the information includes [[the]] a total purchase

price of the product and/or service, wherein the total purchase price comprises the purchase price of each configurable component of the configuration of the product and/or service, and wherein the second web site offers purchase price protection for the purchased configuration of the product and/or service, wherein the user also enters a type of purchase price protection offered by the second website, and wherein the user submits the information to the first web site by selecting a button on the user interface;

initiating, by the first web site, the purchase price protection offered by the second website as indicated by the user for the purchased configuration of the product and/or service in response to the user selecting the button on the user interface;

determining, by the first web site, a current total purchase price for the purchased configuration of the product and/or service at the second web site, wherein the determining includes accessing the second website by the first website and selecting each configurable component of the purchased configuration of the product and/or service to identify the current total purchase price the purchased product and/or service configuration;

determining, by the first web site, whether the user is entitled to a purchase price protection refund based on the current total purchase price at the second web site; and

the first web site sending directly to the user an indication indicating that the user is entitled to the purchase price protection refund.

Support for this amendment can be found in U.S. Pre-Grant Publication No. 2005/0044001 at, for example, FIGs. 3A and 6; and paragraphs [0027], [0034], [0035], [0040]-[0045], [0047], [0057], [0058], [0074], [0077], and [0083]. No new matter has been added.

McClung is completely silent on "the information being entered by the user at the first web site via a user interface at the first website, wherein the information is associated with a configuration of a product and/or service that was purchased by the user from a second web site different from the first web site, wherein the configuration of the product and/or service includes a plurality of configurable components each associated with a different purchase price, wherein the information includes a total purchase price of the product and/or service, wherein the total purchase price comprises the purchase price of each configurable component of the configuration of the product and/or service,... determining, by the first web site, a current total purchase price for the purchased configuration of the product and/or service at the second web site, wherein the determining includes accessing the second website by the first website and selecting each configurable component of the purchased configuration of the product and/or service to identify

the current total purchase price the purchased product and/or service configuration". Accordingly, the presently claimed invention distinguishes over McClung for at least these reasons as well.

The Examiner on page 4 of the present Office Action that McClung further teaches "determining, a price for the product and/or service (Col. 2, lines 14-27). However, as discussed above, the independent claims now more clearly recite "determining, by the first web site, a current total purchase price for the purchased configuration of the product and/or service at the second web site, wherein the determining includes accessing the second website by the first website and selecting each configurable component of the purchased configuration of the product and/or service to identify the current total purchase price the purchased product and/or service configuration". Nowhere does McClung teach or suggest this claim element. Accordingly, the presently claimed invention distinguishes over McClung for at least these reasons as well.

With respect to claim 8, the Examiner on page 4 of the present office Action states that McClung teaches:

> the user also entering a notification type selection indicating how the user is to be notified of a refund from the purchase price protection (Col. 2 Lines 60 - 65) wherein the user can log on to the site to receive the notification or wait by having the host system contact the user using the providing contact information, if any information was ever provided. That is to say, the system's default is to notify them through the web site unless another method has been provided); and
>
> sending an indication r to the user (Claim 8) based on the notification type selection entered by the use indicating that the purchase price protection refund is due (Column 1 Lines 58 - 60; Column 3 Lines 17 - 22

However, col. 2, lines 60-65 of McClung merely teach warranty information; col. 1, lines 58-60 merely state that a user can notified via phone, fax, and/or email, or can be automatically notified when the user logs into the host system; and col. 3, lines 17-22 merely teach automatic refunds. Nowhere do these teachings suggest "the user also entering a notification type selection indicating how the user is to be notified of a refund from the purchase price protection, and wherein the user submits the information to the first web site by selecting a button on the user interface… sending directly to the user an indication based on the notification type selection entered by the user indicating that the user is entitled to the purchase price protection refund".

McClung does not teach "**the system's default is to notify them through the web site unless another method has been provided"** as asserted by the Examiner. McClung gives different embodiments of how to notify a user e.g., phone, fax, automatically on a screen, etc. This does not teach or suggest having a default notification method or using a method selected by a user. McClung does not offer a user any type of notification selection. McClung has to at least suggest allowing a user to select a notification method for the present claim element to be rendered obvious. However, nowhere does McClung provide such a suggestion and asserting otherwise is going beyond the scope of McClung.

With respect to claim 15, the Examiner states on page 4 of the present Office Action that McClung teaches:

> wherein the transmitter is further for sending a portion of the refund directly to the user and keeping a remaining portion of the refund as a fee associated with the user (Col. 1 Lines 47 - 52, 64 - 67; wherein it would have been obvious to one of ordinary skill in the art that the host system is in communication with the vendors and when a refund becomes available the host system will handle the making available of the refund to the customer and credit the amount to the customer's account and wherein it is common sense that business have an associated fee for carrying out said service).

Col. 1 Lines 47-52 of McClung merely state" Alternatively, the vendor may make available a refund, etc. of lesser or of more value than the price difference…" The Applicant respectfully requests that the Examiner provide patents and/or publications or file an affidavit as is allowed under MPEP §707 that support the Examiner's assertion that sending a portion of a refund for a price protection service in response to determining that the website where a user purchased a configuration of a product/service now has that configuration at a lower price and keeping a portion of the refund as a fee associated with the is obvious.

MPEP §2144.03 states "If the applicant traverses such an assertion the examiner should cite a reference in support of his or her position." If, however, the Examiner's statements are based on facts within the personal knowledge of the Examiner, the Applicant respectfully requests that the Examiner support these references by filing an affidavit as is allowed under MPEP §707, citing 37 CFR 1.104(d)(2), and as specified in MPEP §2144.03. See, MPEP §2144.03, "When a rejection is based on facts within the personal knowledge of the examiner,

the data should be stated as specifically as possible, and the facts must be supported, when called for by the applicant, by an affidavit from the examiner."

The Examiner correctly states that "McClung fails to explicitly disclose whether a consumer performed the purchase at the host system or at the vendor's web site." However, the Examiner states that Thakur, which McClung incorporates by reference, discloses:

> that a consumer makes an initial inquiry to the host system and fills out a host system questionnaire. The host system can further keep a record of the consumer's transactions with each vendor in its database including payments, discounts refunds, and accounting transactions. As can be seen in Fig. 1, the consumer can perform transactions directly with the vendor and provide any necessary information to complete the host system questionnaire. The host system is also in communication with the vendor and the consumer, as well. As a result, it would have been obvious for a consumer to purchase a product from a vendor, provide the vendor information to the host system, having the host system search for the vendor within the host system database, and have the host system be in communication with the vendor in order to monitor any transactions made between the vendor and the consumer (See Fig. 1, Page 5-6 ¶ 57, 61-64; Page 7 ¶ 74).

Applicant respectfully suggests that the Examiner is going beyond the scope of McClung and Thakur. For example, as discussed above, Thakur only teaches that a user enters information such as addresses and phone numbers that allow the host system to determine a pertinent geographic area for a user to provide a user with relevant coupons. Just because a user can enter geographic related information does not suggest that the user enters purchase information and pricing protection information as asserted by the Examiner. In fact, the only purpose taught in Thkaur for a user logging into the host system is to enter geographic information and obtain coupon information. Nowhere does Thakur suggest that the user enters transaction information. Thakur does suggest though that the host system automatically retrieves/receives transaction information from the vendor. (See, for example, Thakur at paragraph [0062]. Thakur has to at least suggest a user entering purchase information into the host system for the present claim element to be rendered obvious. However, in view of the suggestion by Thakur that the host system receives/retrieves transaction from the vendor asserting an opposite teaching of a user entering transaction information into the host system is going beyond the scope of Thakur.

Accordingly, the presently claimed invention distinguishes over McClung and Thakur individually and/or in any combination with each other for at least these reasons.

In the Response to Arguments section beginning on page 10 of the present Office Action, the Examiner states with respect to the Applicant's argument that Thakur does not teach or suggest that a consumer enters any information regarding a purchase:

> the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya,* 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

However, the presently claimed "information includes a total purchase price of the product and/or service, wherein the total purchase price comprises the purchase price of each configurable component of the configuration of the product and/or service, and wherein the second web site offers purchase price protection for the purchased configuration of the product and/or service, wherein the user also enters a type of purchase price protection offered by the second website" is not a mere advantage that would flow naturally from McClung and Thakur. As discussed above, the combination of McClung and Thakur, at best, suggest a host system that automatically retrieves transaction information and automatically performs a pricing guarantee operation. Accordingly, the above assertion made by the Examiner is incorrect.

The Examiner further states on page 10 of the present Office Action that:

> the Examiner provided Thakur as an additional teaching in order to show that the system used by McClung, which is the system found in Thakur, would have obviously allowed one having ordinary skill in the art that a consumer can perform a transaction with a vendor, provide the information to the host system , and have the host system be in communication with the vendor in order to monitor any transactions made between the vendor and consumer in the event that a refund or discount is applicable.
>
> Moreover, the above claims recite combinations which only unite old elements with no change in their respective functions and which yield predictable results. Thus, the claimed subject matter likely would have been obvious under KSR. In addition, neither applicant's Specification nor applicant's arguments present any evidence that modifying McClung with the selected elements of Thakur was uniquely challenging or difficult for one of ordinary skill in the art. Under those circumstances, the Examiner did not err in holding that it would have been obvious to one having ordinary skill in the art at the time of the invention

> was made to modify the combination of McClung with the teachings of Thakur to provide a system where a consumer can perform a transaction with a vendor, provide the vendor information to a host system, and have the host system be in communication with the vendor in order to monitor any transactions made between the vendor and consumer in the event that a refund or discount is applicable. Because this is a case where the improvements are no more than the predictable use of prior art elements according to their established functions, no further analysis is required by the Examiner. KSR, 127 S.Ct. at 1740, 82 USPQ2d at 1396. 17.

As stated above, the combination of McClung and Thakur do not allow one of ordinary skill in the art to allow a user to provide transaction information to the host system. McClung merely teaches a user logs into the host system to obtain refund notifications. Thakur merely teaches that a user enters geographical information into the host system so that coupons can be provided to the user. Thakur does not suggest that a user enters any transaction information but does suggest that the host system automatically retrieves/receives transaction information. Therefore, the Examiner's assertion is incorrect and KSR is not applicable here to somehow suggest this element of the claims that is missing from both cited references.

The Examiner also states on page 12 of the present Office Action that:

> one having ordinary skill in the art would have found it obvious from the teachings of McClung as well as what is commonly known in the art that an online computer system having a web site requiring information to be inputted for comparing purposes, for example, would obviously have had text fields and identifiers in order for the information to be properly compared. That is to say, it would have been obvious that if a consumer wanted to make sure that the Motorola cell phone that was purchased for $150.00 would required for the user to input the terms "Motorola" and "**150.00**" into some type of field in order for the computer system to properly store and monitor the correct product and price.

However, McClung teaches price guarantee operations using the host system of Thakur, in which Thakur does not suggest that a user enters any transaction information but does suggest that the host system automatically retrieves/receives transaction. Therefore, McClung and Thakur at best suggest a system where a user can enter geographic information to obtain coupons for vendors within that area and where the host system can automatically receive transaction information from a vendor to automatically perform price guarantee operations. The Examiner's assertions that "one having ordinary skill in the art would have found it obvious from the

teachings of McClung as well as what is commonly known in the art that an online computer system having a web site requiring information to be inputted for comparing purposes, for example, would obviously have had text fields and identifiers in order for the information to be properly compared" is therefore incorrect. Applicant respectfully requests that the Examiner provide patents and/or publications or file an affidavit as is allowed under MPEP §707 that show a user entering purchase transaction information and pricing protection information into a system that performs pricing protection operations..

MPEP §2144.03 states "If the applicant traverses such an assertion the examiner should cite a reference in support of his or her position." If, however, the Examiner's statements are based on facts within the personal knowledge of the Examiner, the Applicant respectfully requests that the Examiner support these references by filing an affidavit as is allowed under MPEP §707, citing 37 CFR 1.104(d)(2), and as specified in MPEP §2144.03. See, MPEP §2144.03, "When a rejection is based on facts within the personal knowledge of the examiner, the data should be stated as specifically as possible, and the facts must be supported, when called for by the applicant, by an affidavit from the examiner."

Claims 2, 4-7, 9, 11-14, 16, and 18-20 depend from claims 1,8, and 15, respectively, and because dependent claims recite all the limitations of the independent claim, it is believed, for this additional reason, that dependent claims 2, 4-7, 9, 11-14, 16, and 18-20 also recite in allowable form.

Accordingly, in view of the remarks above, in view of the amendments to Claims 1-2, 4, 8-9, 11, 15-16, 18, and 20, and because McClung and Thakur each reference taken individually or in any combination thereof does not teach, anticipate, or suggest the presently claimed invention, the Applicant believes that the rejection of claims 1-2, 4-9, 11-16, and 18-20 under 35 U.S.C. §103(a) has been overcome. The Examiner should withdraw the rejection of these claims.

Conclusion

The foregoing is submitted as full and complete response to the Office Action mailed July 10, 2008. It is believed that the application is now in condition for allowance. Allowance of claims 1-2, 4-9, 11-16, and 18-20 is respectfully requested.

No amendment made was related to the statutory requirements of patentability unless expressly stated herein. No amendment made was for the purpose of narrowing the scope of any claim, unless the Applicant has argued herein that such amendment was made to distinguish over a particular reference or combination of references.

The present application, after entry of this Response, comprises seventeen (17) claims, including three (3) independent claims. The Applicant has previously paid for twenty (20) claims including three (3) independent claims. The Applicant, therefore, believes that a fee for claims amendment is currently not due.

The Commissioner is hereby authorized to charge any fees that may be required or credit any overpayment to Deposit Account No.: **50-1556**.

PLEASE CALL the undersigned attorney at (561) 989-9811, should the Examiner believe a telephone interview would help advance prosecution of the application.

Reconsideration, re-examination, and allowance of the present claims are requested.

Respectfully submitted,

Date: October 7, 2008

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